

## REMARKS/ARGUMENTS

This Response to Office Action is filed within six months of the mailing date of the Office Action from the Examiner mailed December 7, 2006. Reconsideration and withdrawal of the rejections set forth in the Office Action is respectfully requested. Claim 1 has been amended for the sole purpose of correcting an antecedent. Claims 31-34, 38, and 39 have been canceled without prejudice. Claims 45-48 are new. Claims 1-3, 10-12, 19, 25 and 35-37, 40-48 are pending in this application.

### 101/112 Rejections

The applicants respectfully disagree with the Examiner regarding the 101 and 112 rejections of claims 38 and 39. However, in the interests of expediting issuance of a patent in this case, the applicants have cancelled claims 38 and 39 without prejudice. The applicants reserve the right to reintroduce these claims in this application or in a continuation, if desired.

### THE PRIOR ART

The Examiner has rejected all pending claims under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,453,334 (Vinson et al.). However, the Vinson et al. patent is not 102(e) prior art. Specifically, 102(e) requires:

the invention was described in - (1) an application for patent, ***published under section 122(b)***, by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another ***filed in the United States before the invention by the applicant for patent***, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application

designated the United States and was published under Article 21(2) of such treaty in the English language (emphasis added).

With respect to 102(e)(1), the Vinson et al. application was not published under section 122(b). With respect to 102(e)(2), Vinson et al. were granted a patent on September 17, 2002, whereas the present application was filed on May 1, 2001. Therefore, Vinson et al. was not granted a patent prior to invention by the applicant. For these reasons, Vinson et al. is not 102(e) prior art to the present application. Accordingly, the applicants respectfully request the Examiner withdraw the rejections of all claims.

The Examiner has rejected claims 31-44 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,810,525 (Safadi et al.). Claims 31-34 have been canceled without prejudice. The applicants initially note that Safadi et al. includes no teachings related to streaming software.

Claim 35 includes the language:

a processing device for processing a request for access to streaming software files stored on at least one server system that is remote from said processing device;

a redirector component that is associated with said processing device for informing said processing device of one or more locations in which said streaming software files are stored; and

wherein said processing device comprises a component that determines whether to grant requests for access to said streaming software files based on: **1) whether an originating process that is making said requests for access is a trusted process, 2) whether a history of previous requests for access made by said originating process exhibits a pre-determined pattern of piracy, and 3) whether a section of said streaming software files that is**

***being requested is a critical section that requires protection from piracy.*** (Numerals and emphasis added).

The Examiner asserts that the elements with added numerals 1-3 from claim 35, above, are taught by Safadi et al. at Col. 1, line 62 –Col. 2, line 10; Col. 3, lines 11-17. Safadi et al., at Col. 1, line 62 – Col. 2, line 10 describe a subscriber selection sent by a subscriber to an access controller. The access controller generates an encrypted message having a service identifier and associated authorization settings, which is sent to the subscriber terminal together with the cost of the service selected. The subscriber verifies credit and generates a secure entitlement token that can be sent to a server to receive the selection. Safadi et al., at Col. 3, lines 11-17 describe a pre-authorization scheme wherein the subscriber can request authorization locally if the subscriber has sufficient credit.

Notably, Safadi et al. do not describe determining whether an ***originating process*** is trusted. Rather, Safadi et al. explicitly state that they rely upon the secure entitlement token. Moreover, Safadi et al. do not describe or imply anywhere in the reference that ***the history of the originating process is recorded or otherwise checked*** for a predetermined pattern of piracy. Furthermore, Safadi et al. do not describe or imply anywhere in the reference that a determination be made as to whether ***a section of the requested file(s) is a critical section*** that requires protection from piracy.

To anticipate a claim, a prior art reference must teach each and every element of the claim. However, the Examiner has failed to show in Safadi et al. any of the three elements of the last paragraph of claim 35. Therefore, the Examiner is relying upon an assertion that has no support in the cited prior art. If the Examiner is relying on personal knowledge to support the finding of what is known in the art, the Examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See CFR 1.104(d)(2)." MPEP 2144.03 (C).

Claims 36-37, 40-44, which may or may not be broader in scope than claim 35, are allowable for reasons similar to those described with reference to claim 35.

**New Claims**

New claims 45-48 depend from claim 1, and are allowable at least for depending from an allowable base claim.

**CONCLUSION**

In view of the foregoing, Applicants submit that all the claims pending in the application patentably define over the prior art. The Applicants respectfully request the Examiner withdraw rejections of all claims. A Notice of Allowance is therefore respectfully requested.

If extra fees are due, please charge our Deposit Account No. 50-2207 from which the undersigned is authorized to draw.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4305.

Respectfully Submitted,  
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